

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOLI SYARIEF PULUNGAN,

Defendant.

ORDER

07-cr-144-bbc

Defendant Doli Syarief Pulungan has filed objections to the report and recommendation entered by the United States Magistrate Judge on April 23, 2008. The magistrate judge recommended denial of defendant's motions to dismiss two counts of the indictment and to obtain a bill of particulars. Defendant is not objecting to the magistrate judge's recommended denial of his motion to dismiss count 2; he does object to the recommended rulings on the other two matters.

Defendant renews the arguments he made before the magistrate judge. He believes that count 1 is unconstitutionally vague because it charges him with conspiring to export a defense article designated on the United States Munitions List but does not explain how a person would know that a particular weapon was on that list. As the magistrate judge

concluded, this is a nonissue. No one can be convicted of the charge contained in count 1 unless the government can prove the person has acted willfully, with knowledge of the weapon's status. Inadvertent violations of the law are not enough for a finding of guilt. I am persuaded that the magistrate judge's analysis of defendant's motion was correct.

The magistrate judge denied defendant's motion for a bill of particulars as it related to the disclosure of the specifications that made the riflescopes "defense articles." However, he interpreted defendant's request as "an attempt to discern whether the designation [of the Leupold riflescope] ever actually was made," R&R at 7, and ordered the government to explain who designated the riflescope as a defense article, what procedures they followed and the actual and specific reasons for the designation. Id.

Defendant welcomes the magistrate judge's order but asks for additional detail: the military specifications that the scope allegedly meets and its actual specifications. This information is necessary, he thinks, to enable him to cross examine any government witness who testifies about how the scope was designated as a defense article. In other words, he wants to have the particular specifications of the scope and the military specifications they allegedly match so that he will be able to challenge the factual conclusions drawn by the government in deciding to designate the scope as a defense article.

Defendant does not need this additional information for his defense. I am not persuaded that he needs even as much as the magistrate judge ordered the government to

provide him, but the government has not objected to the order so that issue is not before the court. In my view, the only permissible question is whether the scope was actually on the Munitions List. If an article is on the list, the statute prohibits any exports of the article without the approval of the Department of State, Directorate of Defense Trade Controls. *Why* it is on the list is no more relevant to defendant's guilt or innocence than the reasons for criminalizing cocaine distribution are to the defense of an accused drug dealer.

Therefore, I agree with the magistrate judge that defendant has no ground on which to seek additional evidence in the form of a bill of particulars or otherwise. The only issue relating to designation that defendant may explore is whether the military made an actual designation of the Leupold riflescope.

ORDER

IT IS ORDERED that the recommendations of the United States Magistrate Judge are ADOPTED as the court's own. Accordingly, IT IS ORDERED that defendant Doli Syarief Pulungan's motions to dismiss counts 1 and 2 of the indictment and for a bill of

particulars are DENIED.

Entered this 29th day of April, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge